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2007 NOV -2 PM 2:59

U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

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27 UNITED STATES DISTRICT COURT
28 CENTRAL DISTRICT OF CALIFORNIA

29 THE UNITED STATES
30 OF AMERICA,

31 Plaintiff,

32 v.

33 THE COUNTY OF SAN
34 BERNARDINO, CALIFORNIA,

35 Defendant.

EDCV07-1454 SGL(OPX)

Civil Action No.

COMPLAINT

1 The United States of America, by the authority of the Attorney General of
2 the United States and at the request of the Administrator of the United States
3 Environmental Protection Agency ("EPA"), alleges as follows:

4 **NATURE OF THE ACTION**

5 1. This is a civil action for recovery of costs under Section 107 of the
6 Comprehensive Environmental Response, Compensation, and Liability Act
7 ("CERCLA"), 42 U.S.C. § 9607. The United States seeks to recover the
8 unreimbursed costs it has incurred in connection with the release and threatened
9 release of hazardous substances into the environment at the Newmark
10 Groundwater Contamination Superfund Site ("Newmark Site") in San Bernardino
11 County, California. In addition, the United States seeks a declaratory judgment
12 under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that Defendant is
13 jointly and severally liable for any future response costs incurred by the United
14 States in connection with the Site.

15 **JURISDICTION AND VENUE**

16 2. This Court has jurisdiction over the subject matter of this action, and
17 the Defendant, pursuant to 28 U.S.C. §§ 1331 and 1345, and Sections 107 and 113
18 of CERCLA, 42 U.S.C. §§ 9607 and 9613.

19 3. Venue is proper in this judicial district under Section 113(b) of
20 CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b), because the claims
21 arose, and the threatened and actual releases of hazardous substances occurred,
22 within this judicial district.

23 **DEFENDANT**

24 4. The Defendant County of San Bernardino, California ("Defendant")
25 is the current owner of the Cajon Landfill (a.k.a. Verdemont Landfill) located in
26 San Bernardino County, California, approximately five miles northwest of the City
27 of San Bernardino.
28

1 5. The Cajon Landfill is located within the Newmark Site.

2 6. The Defendant is a "person," within the meaning of Section 101(21)
3 of CERCLA, 42 U.S.C. § 9601(21).

4 **STATUTORY FRAMEWORK**

5 7. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in
6 pertinent part:

- 7 (1) the owner or operator of a vessel or a facility,
8 (2) any person who at the time of disposal of any hazardous substance
9 owned or operated any facility at which such hazardous substances
10 were disposed of, . . .

11 shall be liable for --

- 12 (A) all costs of removal or remedial action incurred by the
13 United States Government . . . not inconsistent with the
14 national contingency plan. . . .

15 **GENERAL ALLEGATIONS**

16 **Newmark Site Investigations and Response Action**

17 8. Various investigations by the California Department of Toxic
18 Substances Control and the Santa Ana Regional Water Quality Control Board
19 ("Water Board") in the 1980s found that drinking water wells in the city of San
20 Bernardino were contaminated with volatile organic compounds ("VOCs"),
21 principally perchloroethylene ("PCE"), trichloroethylene ("TCE"), and Freon 11
22 and 12.

23 9. The Newmark Site currently includes three operable units ("OU"): the
24 Newmark OU, the Muscoy OU, and the Source Control OU.

25 10. In March of 1989, the Newmark Site was listed on EPA's National
26 Priorities List.

27 11. In response to the release or substantial threat of a release of
28 hazardous substance(s) at or from the Newmark Site, EPA commenced a Remedial

1 Investigation ("RI") focusing on the Newmark OU in late 1990. EPA expanded
2 the RI to include the Muscoy OU in September 1992.

3 12. EPA completed the RI and Feasibility Study ("RI/FS") for the
4 Newmark OU in March 1993. EPA completed the RI/FS for the Muscoy OU in
5 December 1994.

6 13. EPA issued an interim Record of Decision for the Newmark OU on
7 August 4, 1993 and for the Muscoy OU on March 24, 1995.

8 14. The Newmark OU is a plume of contaminated groundwater northwest
9 of the City of San Bernardino and east of the Shandlin Hills. The Muscoy OU is a
10 plume of contaminated groundwater located west of the Shandlin Hills.

11 15. PCE, TCE, and Freon 11 and 12 are defined as a "hazardous
12 substances" pursuant to Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

13 **San Bernadino County Cajon Landfill**

14 16. The Cajon Landfill ("Landfill") is a 127-acre municipal waste
15 disposal facility opened by the Defendant in or about 1963.

16 17. The Defendant owned and operated the Landfill during all periods it
17 was in use and/or open.

18 18. On one or more occasions during its operation, the Landfill accepted
19 inert non-decomposable solids, household, commercial, and organic refuse, scrap
20 metal, liquid septic tank wastes, industrial wastes, septic wastes, and sewage
21 sludge.

22 19. Hazardous substances were disposed of at the Landfill, including, but
23 not limited to, PCE and TCE.

24 20. In or about December 1980, the Defendant closed the Landfill.

25 21. In or about 1991, the State of California Regional Water Quality
26 Control Board issued a Cleanup and Abatement Order to the Defendant with
27 regard to the Landfill, citing ponding and erosion violations.
28

22. Investigations of the Cajon Landfill have shown that groundwater downgradient of the Landfill is more contaminated with VOCs, including PCE and TCE, than groundwater upgradient of the Landfill.

23. There were and are “releases” within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), as well as the threat of continuing releases of hazardous substances, principally PCE and TCE, into the environment at and from the Landfill.

24. The release of hazardous substances from the Landfill caused and/or contributed to contamination at the Site and has caused the incurrence of response costs by EPA.

CLAIM FOR RELIEF

(Claim for Recovery of Response Costs)

25. Paragraphs 1 through 24 are incorporated herein by reference.

26. The Landfill is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

27. The releases or threatened releases of hazardous substances at the Landfill have caused the United States to incur response costs as defined by Sections 101(25) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(25) and 9607(a), at or in connection with the Newmark Site.

28. The costs of the response actions taken by the United States in connection with the Newmark Site are not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

29. The most recent cost information shows that the United States has incurred at least \$88,466,082.96 of unreimbursed response costs, including interest, and continues to incur response costs and interest in relation to the Site.

30. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a)(1), the Defendant is liable to the United States, as the current owner of the Landfill, for

1 the response costs incurred by the United States in connection with the Newmark
2 Site.

3 31. Pursuant to Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2),
4 the Defendant is liable to the United States, as the owner and/or operator of the
5 Landfill at the time of the disposal of hazardous substances, for the response costs
6 incurred by the United States in connection with the Newmark Site.

7 32. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2),
8 the Defendant is liable for a “declaratory judgment on liability for response costs .
9 . . that will be binding on any subsequent action or actions to recover further
10 response costs.”

11 33. Defendant is jointly and severally liable to the United States pursuant
12 to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all unreimbursed response
13 costs incurred, and to be incurred, by the United States in connection with the
14 Newmark Site, including enforcement costs and prejudgment interest on all such
15 costs.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff, the United States of America, respectfully requests
18 that the Court:

19 1. Award the United States a judgment against the Defendant, for all
20 costs incurred by the United States in connection with the Newmark Site, plus
21 interest;

22 2. Enter a declaratory judgment, that will be binding on any subsequent
23 action or actions to recover further response costs or damages, that Defendant is
24 liable for all future response costs not inconsistent with the National Contingency
25 Plan incurred by the United States in connection with the Site; and

26 3. Grant such other and further relief as this Court deems appropriate.
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1 Respectfully submitted,

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